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ABSTRACT

The fact sheet uses a question-and-answer format to describe key components of Public Law 99-457 (Amendments to the Education of the Handicapped Act), which authorizes a preschool program for children ages 3-5 and an early intervention program for handicapped infants and toddlers. In the area of preschool programs, topics covered include implementation requirements, provisions of the law for preschool children, and funding. Aspects of early intervention discussed include requirements for states, timelines, eligibility, types of services, and funding. Development of the Individualized Family Service Plan (IFSP), components of a state early intervention system, the role of the State Interagency Coordinating Council, and procedural safeguards are also described. A final section addresses the role of advocacy groups in relation to implementation of the law. (JW)

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October 1986

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Association for Retarded Citizens

October 1986

Public Law 99-457 Amendments to the Education of the Handicapped Act

to authorize a new preschool program for three to five year olds and an early intervention program for handicapped infants and toddlers and for other purposes.*

What does the New Law (P.L. 99-457) Cover?

The U.S. Congress has enacted legislation to expand coverage under the Education for All Handicapped Children Act (P.L. 94-142), to mandate a preschool program to serve children age three through five, to establish a new Early Intervention State Grant Program for infants and toddlers from birth through age two, and expand and improve various discretionary programs within the Education of the Handicapped Act (EHA) programs. President Reagan signed the bill into law on October 8, 1986.

The new law (P.L. 99-457) repeals the existing Pre-School Incentive Grant Program which in school year 1985-1986 reimbursed school systems with approximately $110 per child served between the ages of three and five years and replaces it with a Pre-School Grant Program.

When Must the Pre-School Provisions of P.L. 99-457 be Implemented?

States must guarantee in their P.L. 94-142 state plans that all children with handicaps from age three will be served by school year 1990-1991, with an additional year granted to the states to meet the three to five year mandate if the Congress fails to appropriate the necessary funds. Under any circumstance, all children with handicaps between the ages of three and five, inclusive, must be served by school year 1991-1992.

The one-year waiver would take effect if the Congress fails to appropriate 1) a total of $656 million during fiscal years 1987, 1988, and 1989 or 2) at least $306 million in fiscal year 1990.

Failure to serve all children three to five will result in the loss of: the state's funds under the Pre-School Grant; the ability to count the three to five year old children in the P.L. 94-142 child count along with the funding attached to that reimbursement formula; and, any discretionary grants under EHA specifically related to pre-school services.

What are the Provisions of the Law for Pre-School Children?

Pre-school services will generally be defined according to the requirements, rights, and protections under P.L. 94-142. In effect, a free, appropriate public education to all children with handicaps from age three must be guaranteed, including provision of Individual Education Programs (IEP), Least Restrictive Environment (LRE), due process protections, appropriate parental involvement and other basic P.L. 94-142 provisions.

There are several provisions specific to three to five year olds. For instance, children with disabilities in this age group will not need to be labeled with a specific disability. Since family services play an important role in pre-school programming, instruction for parents, to the extent desired by the parents, is an appropriate provision within the child's IEP. Service delivery models can range from part day home-based to full day center-based, depending on the unique needs of a particular child. Finally, although the program is administered through state and local education agencies, they may contract with other public and private programs, agencies, and providers in order to provide the full range of services to comply with the law.

How will Funds be Provided to States for Pre-School Children?

In passing P.L. 99-457, the Congress is promising a substantial increase in federal funding for pre-school services. The new funding system to be used for the first three years of the Act is established on two tracks. For all pre-schoolers presently served, the law authorizes up to $300 per child in FY 1987 (school year 1986-87), up to $400 per child in FY 1988 and up to $500 per child in FY 1989. During this same three-year period, all new pre-schoolers served each year (the total number served minus those served in the previous year) will be funded at up to $3,800 per child for one year. During this three year phase-in, an estimated 80,000 presently unserved children are expected to receive services under the Pre-School Grant. States can decide how many new children to serve in any of the phase-in years, with the understanding that all children must be served by school year 1990-1991. The $3,800 per child reimbursement is based on an estimation that approximately 27,000 additional children will be served during each of the three phase-in years. If states were to serve more than that amount in a given year, the $3,800 per child reimbursement would be proportionally reduced. Following the three-year phase-in period, all three to five year old children served will generate up to $1,000.

It is important to note that all of the above funding projections are based on authorization levels in the law. The Congress must decide each year exactly what amount it will appropriate. Again, regardless of the amounts appropriated, the full mandate is applicable starting school year 1991-1992.

Also important to note is that the Pre-School Grant and the P.L. 94-142 State Grant are forward funded (i.e., funds appropriated for FY 1987 are made available on July 1, 1987 for use in school year 1988-89).

During fiscal year 1987, the State Education Agency (SEA) must pass on to Local Education Agencies (LEA) and Intermediate Education Units (IEU) at least 70 percent of the Pre-School Grant funds. In fiscal year 1988 and in subse-

quent years, the state must pass on at least 75 percent of the funds to LEAs and IEUs. The state may not expend more than five percent of the funds for administration in any fiscal year.

The new law also contains provisions requiring state policies and procedures for the development and implementation of interagency agreements between the SEA and appropriate state and local agencies defining financial responsibilities for providing education and for resolving disputes.

The Act also prohibits federal and state funds, particularly those currently allocated for the Title V Maternal and Child Health Block Grant and Title XIX Medicaid programs from being reduced in serving pre-school children.

What are the Early Intervention Requirements for States?

P.L. 99-457 establishes a new Early Intervention State Grant program to serve infants and toddlers from birth through the age of two. The program becomes Part H of the Education of the Handicapped Act.

Once a state applies for, qualifies for, and receives funds under Part H, it must assure the Federal Government that it will have in place a statewide, comprehensive, coordinated, multi-disciplinary, interagency system to provide early intervention services for all infants and toddlers with handicaps and their families within four years of the receipt of such funds.

What are the Timelines for Establishing the Early Intervention Program?

During the first two years from the date the Early Intervention Program receives funds, the state must assure that it is planning, developing, or implementing the statewide system. To obtain funds in the third and fourth years, the state must assure that it has adopted a policy incorporating the components of a statewide system and that the system will be in place by the beginning of the fourth year. During this time period, the state need only conduct multi-disciplinary assessments, develop the IFSPs, and make case management services available.

During the fifth and succeeding years, the statewide system must be fully operational and all eligible infants and toddlers must be served. Any state that already has a P.L. 94-142 mandate in effect from birth will automatically be eligible for funding under the Early Intervention Program.

Who is Eligible for Early Intervention Services?

"Handicapped infants and toddlers" is defined to mean individuals from birth to age two, inclusive, who need early intervention because they are: 1)experiencing developmental delays in one or more of the following areas: cognitive development, psycho-social development, or self-help skills; or 2) have a diagnosed physical or mental condition which has a high probability of resulting in developmental delay. States also have the option of serving infants and toddlers who are "at risk" of having substantial developmental delays if early intervention services are not provided. The terms "developmental delay" and "at risk" are to be defined by the states.

States may also serve children after their third birthday up until such time as the child begins being served under P.L. 94-142. Transition and coordination between the Early Intervention Program and the special education system is required.

What is Included in Early Intervention Services?

Services under this program must be designed to meet the developmental needs of the child in one or more of the following areas: physical development, cognitive development, language and speech development, psychosocial development or self-help skills. Such services include:

- family training, counseling and home visits;
- special instruction;
- speech pathology and audiology;
- occupational therapy;
- physical therapy;
- psychological services;
- case management;
- medical services only for diagnosis or evaluation;
- early identification, screening, and assessment; and
- health services necessary to assist the child to benefit from other early intervention services.

The services must meet state standards and be provided by qualified personnel at no cost except where Federal or state law provides for a system of payments by families, including sliding fees. The services must also be provided in accordance with an individualized family service plan (IFSP).

How is an IFSP Developed?

Each child and its family must receive a multidisciplinary assessment of their unique needs and the identification of services appropriate to meet those needs specified in a written IFSP. The IFSP must be developed within a reasonable period of time after the assessment. Parents may bring a helper to the IFSP meeting to assist them in presenting their views.

Once developed, the IFSP must be evaluated at least annually, and the family must be provided a review of the plan at least every six months. Specific components of an IFSP include:

- a statement of the child's present level of development;
- a statement of the family's strengths and needs as they relate to assisting the child;
- a statement of the anticipated major outcomes to be achieved and how progress is to be measured;
- identification of the specific early intervention services to be delivered,including the frequency, intensity, and method of delivery;
- identification of the case manager for implementation of the plan and coordination with other agencies; and
- transition steps to special education services under P.L. 94-142.

What are the Components of a State Early Intervention System?

The new law specifies the minimum components of a statewide, comprehensive, coordinated, multidisciplinary, interagency system. Such a system must include:

- definition of "developmentally delayed";
- timetable to provide services within four years;
- a provision for timely evaluations and needs assessment;
- individualized family services plans, including case management;
- a comprehensive child find and referral system;
- a public awareness program;
- a central directory of services and resources;
- a comprehensive system of personnel development;
- a single line of authority to administer, supervise, and monitor the program;
- a contracting process or other arrangements with local service providers;
- a reimbursement system;
- personnel standards; and
- a data collection process.

The state plan containing this information must be developed with participation from the public, including public hearings. A summary of the public comments and the state's response must be included in the plan. Assurances of equitable distribution of resources among all geographical areas within each state is also required.

What State Agency is Responsible for the Early Intervention Program?

P.L. 99-457 gives the Governor full discretion to designate a single lead agency to carry out the Early Intervention Program. The lead agency may be the state education agency, another state agency involved with providing services to children or a State Interagency Coordinating Council. The lead agency is responsible for:

- the general administration, supervision, and monitoring of programs and activities;
- the identification and coordination of all available Federal, state, local and private resources, and the assignment of financial responsibility to appropriate state agencies;
- the entering into formal state interagency agreements that offer such financial responsibility; and
- the resolution of disputes.

What is the Role of the State Interagency Coordinating Council?

The Act requires a State Interagency Coordinating Council which may serve as the lead state agency. The Council, appointed by the Governor, shall have 15 members, of which at least three are parents of infants or toddlers with handicaps age three through six; at least three are public or private providers of services; at least one represents the state legislature; at least one is involved in personnel preparation, and others representing each of the state agencies involved in paying for or providing early intervention services. The Council's main functions are to advise and assist the lead state agency in preparing the Early Intervention application, in the identification of fiscal and other support, in the assignment of financial responsibility to appropriate agencies, and in the promotion of the interagency agreements.

Council meetings must be held at least quarterly, be open and accessible to the public. Funds under the Early Childhood Program may be used to staff and carry out the functions of the Council.

What Funding is Authorized for the Early Intervention Program?

The new law authorizes $50 million in FY 1987, $75 million in FY 1988, and "such sums as may be necessary" for the next three years. The Congress must appropriate the actual amounts on an annual basis. Eligible states will be allotted their share of the funds based on a census count of their zero to two population in relation to the two populations of other states. No state will receive less than one-half of one percent of the appropriated amount. For example, if $50 million is appropriated in FY 1987, the minimum allocation states would receive is $250,000. Since there are already significant amounts of federal and other funding sources already providing services to infants, the Act requires that the Early Intervention funds be used as the "payer of last resort." States are not allowed to reduce medical or other assistance from other sources, including specifically Title V Maternal and Child Health and Title XIX Medicaid funds.

In addition to using funds to plan, develop, and implement the statewide system, state agencies may also use the funds for direct services not provided by other sources and to expand and improve existing services.

What Procedural Safeguards are Mandated by the Law?

States are required to develop a system of procedural safeguards that, at a minimum, must provide for:

- the timely resolution of administrative complaints by parents and the right to appeal to a state or Federal court;
- confidentiality of personal, identifiable information;
- the opportunity to examine records;
- procedures to protect the child if parents or guardians are not known, unavailable, or the child is a ward of the state; and
- the provision of services pending resolution of the complaint.

Two types of complaints by parents are allowable. One concerns the state's compliance with the law (e.g., failure to develop an IFSP) while the other deals with more systemic issues, such as the state's failure to develop a statewide system. The first type of complaint must be presented to an impartial individual and be speedily resolved.

Now that P.L. 99-457 has been Passed, what will Happen Next?

Work has already begun by the Federal Office of Special Education Programs to develop rules and regulations to specify how the provisions of the law will be implemented. This is a process in which the government will propose these regulations for critical review by those who will be responsible in the nation's SEAs and LEAs for implementation of P.L. 99-457. Others who will react include ARCs and other advocacy and professional organizations as well as individuals who have interest.

What Specifically Should ARCs and Other Advocates be Planning to do?

With regard to the three to five pre-school mandate, since all states are already providing some level of services to at least a portion of their pre-schoolers with handicaps and have also at least begun to plan, develop or implement Early Childhood Planning Grants under the previous EHA authority, most will now have to alter their planning to accommodate the new required timelines under P.L. 99-457.

Because the states will begin modifying their special education state plans in the near future to qualify for the new funds which will become available, ARC chapters should determine their state's current status regarding their present Early Childhood Planning Grant. In those few states that are serving all of its three to five population, it is essential to determine whether those programs fully comply with P.L. 94-142 standards (e.g., IEP, LRE, due process, etc.). If not, the state, under P.L. 99-457, must begin to fully meet those standards. If the state is meeting P.L. 94-142 standards, a determination of how the state intends to use the additional funds to expand and improve services should be made. It is important to remember that states cannot supplant any existing funds currently being used for pre-school services. New funds should finance additional or expanded services, for example, transportation or extended school year programs.

In those states in the planning and/or development stage, it is vital that work occur with the state and local providers on a variety of activities including:

- finding unserved children;
- estimating the number of new children to be served during the phase-in period;
- assessing personnel shortages and needs;
- assisting new parents in understanding their rights and responsibilities under P.L. 94-142;
- monitoring the development of interagency agreements; and
- providing comments during the development of state plans.

Because the early intervention mandate will only apply to those states who successfully apply for funds, the first and probably most important role for the ARC to play in obtaining a statewide Early Intervention System is to convince the Governor and the state legislature to submit an application. Given the relatively small amount of funds authorized in the program, some states will be reluctant to apply. ARCs should stress the cost effectiveness of early intervention on later special education and long-term care for persons with handicaps.

In regards to the specific provisions of the Early Intervention program, several key provisions requiring active ARC involvement include:

- Which state agency is best suited to be the lead agency?
- How should "developmentally delayed" and "at risk" be defined?
- How will the state identify all the children?
- Should "at risk" children be served?
- Who should be appointed to the Coordinating Council?
- What is the best utilization of the program's funds?
- How can meaningful interagency agreements be reached and fully implemented?
- How can "new" parents be helped to participate in the IFSP?
- How should the children reaching three years of age be successfully transitioned in special education?
- How can advocates make sure funds are not being supplanted?

* Special thanks to Fred Weintraub and Joe Ballard, the Council for Exceptional Children for their assistance in developing this information.